

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.10972 of 1999

ORAL ORDER:

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This writ petition is filed seeking a Certiorari to call for the records relating to the Order passed by the second respondent dated 25.2.1999 and quash the same as arbitrary and illegal.

It appears, petitioner was proceeded with departmentally since he absented from duty (deserted) and applied for Earned Leave and thereafter, the same was not sanctioned and in spite of issuing telegrams and advice to report back, he did not report. After conducting a detailed enquiry into the matter, the disciplinary authority by order dated 10.10.1998 imposed punishment of withholding of one increment for a period of one year which will not have the effect on future increments. Being aggrieved by the same, petitioner carried the matter in appeal before the second respondent. It appears, second respondent felt that the punishment imposed by the disciplinary authority was not in proportionate with that of the misconduct proved, therefore, issued a show cause notice dated 19.1.1999 proposing to reduce one stage of pay for a period of one year which will not have the effect of earning future increments and called the explanation of the petitioner. The petitioner submitted a detailed explanation to the show cause notice and thereafter, the second respondent passed the impugned order dated 25.2.1999 enhancing the punishment. Aggrieved by the same, the present writ petition is filed.

The learned counsel for petitioner strenuously contended that the second respondent-appellate authority without conducting re-enquiry and giving further opportunity to the petitioner enhanced the punishment imposed by the third respondent, which is highly arbitrary and illegal. Instead of conducting fresh enquiry, second respondent simply issued

show cause notice for enhancing the punishment. Availing leave does not warrant any punishment and instead of considering the appeal on its merits, the appellate authority bent upon enhancing the punishment imposed by the disciplinary authority without any cogent reasons, therefore, the impugned order passed by the appellate authority is liable to be set aside.

Whereas, the learned counsel for respondents Smt.C.Vani Reddy strenuously contended that since the petitioner is in the habit of availing leave very frequently and in a period of 3 ½ years, he availed leave for seven times and when his leave was not sanctioned, petitioner deserted from duties. Therefore, issuance of show cause notice and enhancing punishment by the appellate authority cannot be said to be either arbitrary or illegal and it is within the powers vested in the appellate authority, therefore no interference is called for by this Court under Article 226 of the Constitution of India.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned order and other material made available on record.

The show cause notice issued by the appellate authority dated 19.1.1999 simply says that the petitioner applied for 20 days earned leave with effect from 4.5.1998 which was not sanctioned due to administrative reasons, and in spite of the fact that the petitioner was directed to report back, he remained absent for 34 days and further within a short period of 3 ½ years, petitioner has availed leave for seven times and when the leave was refused, he deserted duty and such tendency is not appreciable. Except this, nothing has been stated further. In fact, after taking into consideration of all these facts, the disciplinary authority imposed punishment of stoppage of one increment without cumulative effect and the appellate authority enhanced the said punishment by reducing the pay by one stage from Rs.3125/- to Rs.3050/- in the time

scale of pay of Rs.3050-75-3950-80-4590 for a period of one year with immediate effect

I am of the opinion that no cogent reasons have been assigned for imposing higher punishment than the one imposed by the disciplinary authority. May be, it does not have the effect of postponing the future increments, but once there is a reduction in the timescale, it amounts to imposing higher punishment than the one imposed by the disciplinary authority. In effect, by the order of the appellate authority, the punishment of withholding one increment without cumulative effect imposed by disciplinary authority has been enhanced to that of withholding of one increment with cumulative effect. Therefore, I am of the opinion that imposing any higher punishment by the appellate authority, it should show some reasons for such enhancement. Absolutely, no reasons have been assigned except stating that in a period of 3 ½ years, petitioner has availed leave for seven times. It is not the case of the appellate authority that the leave applied for seven times has not been sanctioned, but only in the present case, leave was not granted though the petitioner applied for the same. I am of the view that the order passed by the appellate authority is arbitrary and illegal and therefore, the same liable to be set aside.

In the result, the writ petition is allowed and the impugned order passed by the appellate authority dated 25.2.1999 is set aside. However, the order passed by the disciplinary authority dated 10.10.1998 is confirmed. No order as to costs.

C.V.RAMULU,
J

Date: 18.7.2007

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W.P.No.10972 of 1999

18.7.2007

**IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD**

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.10972 of 1999

Date: 18th July, 2007

Between:

Mohd.Sadique

.. Petitioner

And

The Director General,
CISF Head Quarters, Block No.13,
CGO Complex, Lodhi Road,
New Delhi & others.

.. Respondents